

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1354 OF 1998

H.S.Gupta & others ...Plaintiffs

Versus

Dipchand L. Taswala & others ...Defendants

Shri A.S.Rai for the Plaintiffs.

Shri S.J.Purohit for the Defendant No.2.

CORAM : ABHAY S.OKA, J.

DATED : AUGUST 08, 2007.

JUDGMENT:

1. Heard the learned counsel appearing for the Plaintiffs and the learned counsel for the first Defendant. The suit is listed under the caption of "Undefended Suits for Exparte Decree".

2. The learned counsel for the Plaintiff has tendered on record an affidavit in lieu of evidence of the first Plaintiff. The said affidavit is marked "X" for identification and is taken on record. He has produced on record the 10 original document alongwith a list. The said documents alongwith the list are marked "Y" (collectively) for identification and the same are taken on record.

3. The case of the Plaintiffs is that the first Defendant is the stock broker registered under the Bombay Stock Exchange. The second and third Defendants are residents of Andhra Pradesh. The fourth Defendant

is a Mutual Fund.

4. According to the case of the Plaintiffs they handed over during the period from 09th September, 1994 to 23rd September, 1994 to the first Defendant 600 shares of Tata Chemicals Ltd for sale on Bombay Stock Exchange. As per the instructions of the Plaintiffs the first Defendant sold the said shares for the aggregate value of Rs.2,69,100/-. The Plaintiffs had instructed the first Defendant to purchase 12,000 units of GIC balanced fund of the fourth Defendant at the prevailing market rate by utilising the said amount of Rs.2,69,100/-.

5. According to the case of the Plaintiff, the first Defendant purchased twelve thousand units of the GIC balanced fund from time to time and handed over the same alongwith duly signed transfer forms in favour of the Plaintiffs. The transfer forms alongwith units were submitted by the Plaintiffs for effecting transfer. The documents were submitted by the Plaintiffs under the letter dated 30th January, 1995 to M/s.IIT Corporate Services, Asset Management Company of the fourth Defendant. According to the case of the Plaintiffs seven thousand units were duly transferred in their favour. However, in case of five thousand units, they received a letter from the registrars stating that the said units stood in joint names of the second and third

Defendants and the Transfer Deed was signed only by the second Defendant. The units were returned as the third Defendant had not signed Transfer Deed. According to the case of the Plaintiffs no steps were taken by the first Defendant to get the said units transferred in the name of the Plaintiffs. Accordingly, a letter dated 24th February, 1995 was addressed to the first Defendant by the Plaintiffs. The Plaintiffs by their Advocates notices dated 02nd September, 1997 called upon the second and third Defendants to hand over to the Plaintiffs valid Transfer Deed in respect of the said 5000 units and refund to the Plaintiffs the dividend amount received in respect of the said units. It is stated that though the said letter was duly served to the second and third Defendants they did not respond.

6. The claim of the Plaintiffs in the suit has been proved by the said affidavit. The document at item No.1 in the list of the documents proves that the first Defendant had sold 600 shares of Tata Chemicals held by the Plaintiffs. The documents at item Nos.2 and 3 show that twelve thousand units of GIC Balanced Fund were purchased by the first Defendant for the Plaintiffs by utilising the sum of Rs.2,69,100/- received as consideration of the sale of 600 shares.

7. The letter dated 05th august, 1996 sent by the IIT Corporate Services Ltd to the first Plaintiff shows

that the five thousand units purchased by the Plaintiffs were returned. An office copy of the notice sent to the second and third Defendants is also placed on record. Thus, the Plaintiffs have established that they had acquired title to the said five thousand units held by the second and third Defendants and the transaction was made by the first Defendant. Therefore, the Plaintiff is entitled to a declaration in terms of prayer clause (a). In so far as prayer (b) is concerned the same can be granted only against second and third Defendants as the first Defendant cannot sign the Transfer Deeds. Prayer (c) will have to be granted. In view of the grant of prayers (a) to (c), it is not necessary to grant prayer (d). As no relief can be granted as against the first Defendant, the suit will have to be dismissed as against the first Defendant.

8. Hence, I pass the following order:

- (i) The suit stands dismissed as against the first Defendant.
- (ii) There will be a decree in terms of prayer clauses (a) to (c). The second and third Defendants will pay costs of the suit to the Plaintiffs.
- (iii) Certified copy is expedited.

JUDGE